Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1974

No. 74-1335

DONALD RINGGOLD and JOHN C. ASHHURST,

Appellants,

vs.

BOROUGH OF COLLINGSWOOD,

Appellee.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION

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Appellee, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, hereby moves the Court to dismiss the appeal herein on the ground that it is manifest that the questions on which the decision of the cause depends are so insubstantial as not to warrant further argument.

STATEMENT OF THE CASE

The appellants Donald Ringgold and John C. Ashhurst were employed by a Pennsylvania corporation to call door to door within the Borough of Collingswood, Camden County, New Jersey to collect data from residents of the Borough of Collingswood as to the radio stations to which those residents were listening and as to the commercial products advertised on those stations. In their door to door calls, appellants communicated no ideas or beliefs to the residents upon whom they were calling. No leaflets containing advocacy of any view, idea or belief were distributed. Appellants were not advocates. They were simply collecting information — audience preferences as to radio programming and the advertising of commercial products — which was subsequently collated by appellants' employer and sold by it to subscribers. One of the residents of the Borough of Collingswood upon whom appellants called informed the Collingswood Police Department and a complaint charging appellants with violation of the "Canvassing and Soliciting" ordinance (Ordinance No. 601) of the Borough of Collingswood was subsequently filed.

The ordinance under which appellants were charged provides that, "No person . . . shall canvass, solicit . . . or call from door to door . . . without first registering with the Chief of Police . . ." A canvasser or solicitor is defined by the ordinance as one who, *inter alia,* "makes surveys for research purposes, analyses, opinion polls, rating data . . . which . . . involves a door to door activity."

It was conceded that appellants had not registered with the Chief of Police and that they had not received from him a license to canvass or solicit.

The Complaint charging appellants with a violation of the foregoing ordinance came before the Municipal Court of the Borough of Collingswood. Appellants' claim that the ordinance was constitutionally invalid, as applied to them, was seasonably raised before the Municipal Court of Collingswood and has been subsequently raised in each of the appellate courts within the State of New Jersey. The Municipal Court of Collingswood found that appellants had violated the ordinance and a judgment of a conviction against them was entered therein. The matter was heard de novo by the Camden County Court and judgments of conviction were again entered. Appellants' convictions were affirmed unanimously by the Superior Court of New Jersey, Appellate Division, and the Supreme Court of New Jersey.

Appellants filed their appeal with this Court, asserting their constitutional claims unanimously rejected by the courts below. A Jurisdictional Statement has been filed by appellants with this Court. On this motion, appellee contends that the questions raised in the Jurisdictional Statement are so insubstantial as not to warrant further argument. The argument set forth hereinafter is in support of this motion.

ARGUMENT

Appellants contend, in the first question presented in their Jurisdiction Statement that the ordinance, as applied to them, unconstitutionally deprives them of freedom of speech in violation of the First and Fourteenth Amendments to the Constitution of the United States. They rely principally upon *Thomas v. Collins,* 323 U.S. 516 (1944). There, this Court held that an ordinance requiring licensing could not constitutionally

be enforced against one who was doing nothing more than making a speech in which he advocated a cause. Here, appellants were making no speech. They were advocates for no cause. They were not communicating any ideas or beliefs. We submit that *Thomas* is inapplicable.

What appellants were doing was soliciting door to door. This Court has previously considered the validity of municipal ordinances directed against door to door solicitations. Even where such ordinances have been applied against persons intending to communicate ideas and beliefs or advocating causes, this Court has frequently indicated that such ordinances, to the extent they require only identification and do not grant impermissible discretion to licensing officials, are invalid. In *Poulos v. New Hampshire*, 345 U.S. 395 (1953), a municipal ordinance required that a license be issued for religious services to be held in a public park. The ordinance made the issuance of such a license a ministerial act. This Court held the ordinance valid. In *Cantwell v. Connecticut*, 310 U.S. 296 (1940), and *Schneider v. Irvington*, 308 U.S. 147 (1939), this Court considered the validity of ordinances requiring licensing of door to door solicitors, as applied to members of Jehovah's Witnesses who were calling door to door for the purpose of communicating their beliefs. The Court held both ordinances invalid but only because they granted impermissible discretion to the licensing officials. Indeed, in *Cantwell*, this Court indicated that a licensing ordinance calling solely for identificaiton and not containing impermissible standards could validly be applied to the appellant therein. In *Martin v. Struthers*, 319 U.S. 141 (1943), a municipal ordinance forbade persons going door to door to distribute handbills. The ordinance was held invalid as

applied to a member of the Jehovah's Witnesses going door to door distributing religious leaflets. The Court indicated, however that, "A city . . . can by identification devices control the abuse of the privilege by criminals posing as canvassers." *Id.* at 148. The concurring opinion of Mr. Justice Murphy, joined by Mr. Justice Douglas and Mr. Justice Rutledge added, "No doubt there may be relevant considerations which justify considerable regulation of door to door canvassing, even for religious purposes — regulation as to time, number and identification of canvassers, etc., which will protect the privacy and safety of the home. . . ." *Id.* at 151. The ordinance in question here has been construed by the courts of New Jersey as granting no exercise of discretion in the granting of a license and thus as requiring a ministerial issuance of a license to persons such as appellants. We submit therefore that even had appellants been communicating ideas or advocating causes, the ordinance in question here calls for nothing more than mere identification and the ministerial issuance of a license and may validly be applied even to such persons.

The appellants here, however, were not communicating ideas or beliefs. No advocacy was involved. Appellants were engaged in work leading to the preparation of a commercial product. This Court has previously held that a municipal ordinance may absolutely prohibit door to door solicitations where a commercial product is involved. *Breard v. City of Alexandria*, 341 U.S. 622 (1951). The ordinance in question here does not wholly prohibit door to door solicitation for the commercial uses made of it by appellants; it sought only to require appellants to identify themselves by making application for and being ministerially granted a license. As applied to such

a purpose, we submit that *Breard, supra,* holds that an ordinance such as appellee's may constitutionally be applied to appellants.

Appellants next contend that the ordinance although construed by the Courts below as requiring a ministerial issuance of a license, contained a discretionary power which the Courts below excised. In the second question set forth in their Jurisdictional Statement, appellants contend that the Courts below could not constitutionally prune a discretionary power from the ordinance and still hold them guilty of violating the ordinance. In support of their contention, appellants rely wholly upon *Shuttlesworth v. Birmingham,* 394 U.S. 147 (1969). There, a licensing ordinance contained impermissible discretionary standards which were excised by the Supreme Court of Alabama. This Court examined the surrounding factual circumstances and found that the local officials enforcing the ordinance had not enforced it in accordance with the safeguards inserted into the ordinance by construction. The appellant there had applied for a permit and had been refused. The enforcing official had specifically referred to the discretionary authority given to him by the ordinance as written. Here, we have no surrounding factual circumstances. Appellants here never applied for a license. No showing has been made that anyone applying to appellee for a license has ever been refused. Absent such surrounding factual circumstances, this Court has repeatedly held that facial overbreadth will not be invoked when a limiting construction has been placed on a challenged statute and that convictions will be upheld as to events occurring prior to such construction. *Broadrick v. Oklahoma,* 413 U.S. 601 (1973); *United States v. Thirty Seven Photographs,* 402 U.S. 363

(1971); *Dombrowski v. Pfister,* 380 U.S. 479 (1965); *Cox v. New Hampshire,* 312 U.S. 569 (1941).

Appellants next contend that the ordinance as applied to them is an invalid exercise of appellee's police power. It has repeatedly been held by this Court that soliciting ordinances are a proper exercise of municipal police powers. In *Martin v. Struthers,* 319 U.S. 141 (1943), Mr. Justice Black indicated that ordinances such as these serve a valid purpose since door to door distribution can be a nuisance or a blind for criminal activities. In *Niemotko v. Maryland,* 340 U.S. 268 (1951), Mr. Justice Frankfurter, in his concurring opinion, indicated that a municipality has a substantial interest in the regulation of door to door solicitation, namely, protection of the public from fraud and from criminals who use solicitation as a device to enter homes. In both *Martin, supra* and *Niemotko, supra,* the issue was the validity of the ordinances in question as applied to persons advocating beliefs. Here, appellants were advocating no ideas or beliefs; they were soliciting for a commercial purpose. In *Breard v. Alexandria, supra,* this Court held that an ordinance prohibiting solicitation as applied to persons soliciting for commercial purposes was not an improper exercise of a municipality's police power. The purpose of appellants' solicitation being commercial, we submit that *Breard, supra,* holds that appellee's ordinance, as applied to appellants, is a proper exercise of appellee's police power.

Appellants next contend that the ordinance as applied to them imposes an undue burden on interstate commerce. In *Breard v. Alexandria, supra,* this Court held that a municipal ordinance prohibiting door to door soliciting, as applied to

persons soliciting for a commercial purpose, was not an undue burden on interstate commerce.

Finally, appellants contend that they have been denied the equal protection of the law. They state, in the Jurisdictional Statement, that they are required to apply for and obtain a license while charitable solicitors are not required to do so. This is simply not correct; appellee does require persons soliciting for charitable purposes to obtain a license. Appellants set forth no argument why they have been deprived of equal protection and we submit that the opinion of the Court below, that Court having concluded that no such deprivation occurred and having set forth its reasons for reaching that conclusion, adequately answers appellants' contention.

CONCLUSION

For the reasons set forth herein, appellee respectfully submits that no substantial federal question has been presented by appellants in their Jurisdictional Statement and it accordingly moves the Court to dismiss the appeal herein on the ground that the questions presented are so insubstantial as not to warrant further argument.

Respectfully submitted,

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